

REMARKS

Claims 1 and 3-23 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Moreno et al. (US5324708) in view of Wikeley (US6107249) and with respect to claim 21 (Nielson et al. (US5795847). Applicants respectfully traverse.

The claims of the instant application are directed to low-foaming, aqueous glyphosate concentrates comprising glyphosate in a concentration of from 240 to 550 g/l based on glyphosate acid. Moreno is concerned with a process for making crystalline, non-hygroscopic monoammonium salts of compounds of Formula I (Col. 4, line 58 – Col. 7, line 10). Extensive lists of ‘auxiliary products’ are listed in Moreno (col. 7, line 40 to col. 8, line 46) and Moreno provides no guidance to the benefits obtained by the compositions of the present invention.

On page 3 of the Office Action, the examiner states “Moreno et al. clearly disclose a composition comprising glyphosate isopropylammonium salt and isotridecyl alcoholpolyglycol ether which would be a low foaming herbicidal composition: *citing* Example II.37”. The formulation of Example II.37 is a solid concentrate of glyphosate and clearly the solid formulation would not foam. To modify the Moreno reference in an attempt to render the current claims obvious would completely destroy the teachings and intent of Moreno.

The Examiner’s statement on page 6 of the Office Action “The method of reducing the foaming of a glyphosate concentrate is intrinsic in mixing the composition of Moreno et al. …” is completely without support. In the 52 different formulation examples, water is not taught and is clearly desired to exclude water in the formation of the solid, non-hygroscopic compositions.

The Examiner suggests that one skilled in the art desirous of making a concentrated aqueous solution of glyphosate from the compositions of Moreno would have used less water than the amount used to dissolve the non-hygroscopic compositions of Moreno for use in the field. There is absolutely no teaching or suggestion in Moreno to motivate one skilled in the art to select one formulation from 52 options and dissolve in only a small amount of water to obtain an aqueous concentrate claiming glyphosate in the amount set forth in the present claims. Further, Moreno teaches away from preparing aqueous concentrates (col. 1, lines 44-67) and alleges that there are advantages to the non-hygroscopic materials of the patent compared to aqueous concentrates.

The Examiner relies on Chaisalee to support the contention that the ethoxylated nonyl-phenol of Moreno would behave as an additional anti-foam. Moreno does not provide details on the ethoxylated nonyl-phenol (i.e., number of EO units). From the Chaisalee article, the effect of ethoxylated nonyl-phenols on foaming properties are dependent on numerous parameters including concentration, temperature and number of EO units. In any event, since the compositions of Moreno are solid compositions, there will be no antifoam effect in the concentrated form from any of the components in the cited example of Moreno.

Wikeley fails to remedy the deficiencies of Moreno. Even if Wikeley were to teach or suggest concentrations of glyphosate and an alkyl polyglycoside within the scope of the present claims, there is no motivation provided to modify the solid, non-hygroscopic salts of Moreno in view of the teachings of Wikeley to arrive at the claimed invention.

The examiner relies on Nielson for the addition of certain amounts of ammonium sulfate to a glyphosate formulation. Similar to Wikeley, Nielson's teaching of the addition of ammonium sulfate to glyphosate formulations would not lead one to modify Moreno and form an aqueous concentrate as Moreno is directed to forming solid, non-hygroscopic salts of phosphonic or phosphinic acids and such a modification would destroy the teachings of Moreno.

As this response is submitted within three months from the mailing date of the Office Action, no additional fees are believed necessary.

However, in the event the undersigned is mistaken in his calculations, an appropriate extension of time to respond is respectfully requested, and the Commissioner is authorised to debit the appropriate fee for that extension, or any other fee, from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

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Date: May 19, 2008